

2581-0139/dmf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RICHARD DENNIS and SUSAN DENNIS,

ANSWER

Plaintiffs,

07 CV 5741 (WHP)

-against-

SHERIFF'S DEPARTMENT OF DUTCHESS COUNTY,
DUTCHESS COUNTY, RALPH FRANCESCHI and E.H.
PEARSALL,

Defendants.
-----X

The defendants, by their attorneys, McCabe & Mack LLP, as and for their answer to the complaint of the plaintiffs, respectfully show to the court and allege as follows.

INTRODUCTION

1. With regard to paragraph numbered "1" of the complaint, neither admit nor deny as states conclusions of law.

JURISDICTION

2. With regard to paragraphs numbered "2", "3" and "4" of the complaint, neither admit nor deny as state conclusions of law.

PARTIES

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "5" of the complaint.

4. With regard to paragraph numbered "8" of the complaint, admit that defendants are employed as Deputy Sheriffs in the Dutchess County Sheriff's Office.

FACTS COMMON TO ALL CLAIMS

5. Deny those allegations contained in paragraphs numbered "9", "19", "20",

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“27”, “28”, “29”, “30” and “31” of the complaint.

6. With regard to paragraphs numbered “11”, “12”, “13” and “14” of the complaint, neither admit nor deny and refer the Court to the document for its content and import.

7. With regard to paragraph numbered “16” of the complaint, admit only that the Dutchess County Sheriff’s Office employs deputy sheriffs.

8. With regard to paragraph numbered “17” of the complaint, admit only that the Dutchess County Sheriff’s Office is a department or division of Dutchess County.

9. With regard to paragraph numbered “18” of the complaint, admit only that Dutchess County employs deputy sheriffs who work in the Dutchess County Sheriff’s Office.

10. With regard to paragraphs numbered “32” and “33” of the complaint, neither admit nor deny and refer the Court to the document for its content and import.

AS TO THE FIRST CAUSE OF ACTION (RICHARD DENNIS)

11. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “33” and incorporated by reference in paragraph “34” of the complaint as if the same were more fully set forth herein at length.

12. Deny those allegations contained in paragraphs numbered “35”, “36” and “37” of the complaint.

AS TO THE SECOND CAUSE OF ACTION

13. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “37” and incorporated by reference in paragraph “38” of the complaint as if the same were more fully set forth herein at length.

14. Deny those allegations contained in paragraphs numbered “39”, “40” and “41” of the complaint.

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AS TO THE THIRD CAUSE OF ACTION

15. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “41” and incorporated by reference in paragraph “42” of the complaint as if the same were more fully set forth herein at length.

16. Deny those allegations contained in paragraphs numbered “43” and “44” of the complaint.

AS TO THE FOURTH CAUSE OF ACTION

17. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “44” and incorporated by reference in paragraph “45” of the complaint as if the same were more fully set forth herein at length.

18. With regard to paragraph numbered “46” of the complaint, admit only that plaintiffs were arrested.

19. Deny those allegations contained in paragraphs numbered “47”, “48” and “49” of the complaint.

AS TO THE FIFTH CAUSE OF ACTION

20. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “49” and incorporated by reference in paragraph “50” of the complaint as if the same were more fully set forth herein at length.

21. Deny those allegations contained in paragraphs numbered “53” and “54” of the complaint.

AS TO THE FIRST CAUSE OF ACTION (SUSAN DENNIS)

22. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “54” and incorporated by reference in paragraph “55” of the complaint as if the same were more fully set forth herein at length.

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23. Deny those allegations contained in paragraphs numbered “56”, “57”, “58” and “59” of the complaint.

AS TO THE SECOND CAUSE OF ACTION

24. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “59” and incorporated by reference in paragraph “60” of the complaint as if the same were more fully set forth herein at length.

25. Deny those allegations contained in paragraphs numbered “61” and “62” of the complaint.

AS TO THE THIRD CAUSE OF ACTION

26. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “62” and incorporated by reference in paragraph “63” of the complaint as if the same were more fully set forth herein at length.

27. Deny those allegations contained in paragraphs numbered “64”, “65” and “66” of the complaint.

AS TO THE FOURTH CAUSE OF ACTION

28. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “66” and incorporated by reference in paragraph “67” of the complaint as if the same were more fully set forth herein at length.

29. With regard to paragraph numbered “68” of the complaint, admit only that plaintiff was arrested.

30. Deny those allegations contained in paragraphs numbered “69”, “70” and “71” of the complaint.

AS TO THE FIFTH CAUSE OF ACTION

31. Repeat, reiterate and reallege each and every denial to each and every

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allegation contained in paragraphs numbered “1” through “71” and incorporated by reference in paragraph “72” of the complaint as if the same were more fully set forth herein at length.

32. Deny those allegations contained in paragraphs numbered “75” and “76” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

33. Defendants Franceschi and Pearsall acted in good faith and are entitled to qualified immunity.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

34. Probable cause existed for each plaintiffs’ arrest.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

35. All force used, if any, was objectively reasonable and necessary.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

36. All claims of excessive force raised as federal constitutional claims are barred by the statute of limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

37. All claims of assault and battery under state law are barred by the statute of limitations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

38. Plaintiffs failed to comply with the provisions of General Municipal Law §50-e *et. seq.* with respect to their assault and battery claims under state law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

39. Plaintiffs’ false arrest claims raised as federal constitutional claims are barred by the statute of limitations.

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AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

40. Plaintiffs' false arrest claims under state law are barred by the statute of limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

41. Plaintiffs failed to comply with the provisions of General Municipal Law §50-e *et. seq.* with respect to their false arrest claims under state law.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

42. Plaintiffs' conspiracy claims fail to state a cause of action.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

43. The complaint fails to state a claim against Dutchess County or the Dutchess County Sheriff's Office under federal law.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

44. Susan Dennis was arrested pursuant to a warrant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

45. Punitive damages are not recoverable against a municipality.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

46. The Court lacks personal jurisdiction over the individual defendants due to an insufficiency in service of process.

WHEREFORE, the defendants, demands judgment dismissing the complaint of the

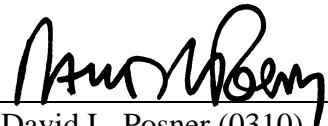
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plaintiff herein, plus the costs and disbursements of this action and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York
August 2, 2007

Yours, etc.

McCABE & MACK LLP

By: 
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